

Republic of Iraq
Federal Supreme Court
Ref. 43 / federal / 2019



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The Federal Supreme Court (F S C) has been convened on 11/7/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyer Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Prime Minister/ being in this capacity – his agent
The legal counselor Hayder Al-Asofi.

The defendant: the Speaker of the ICR/ being in this capacity-his
Agents the Director-General Ph.D. Sabah Juma'a Al-Bawi, legal advisor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff/ being in this capacity claimed that the defendant/being in this capacity enacted the Law of the Independent High Commission for Human Rights (35) of 2008 in violation of the provisions of the Constitution and what was settled by the judiciary of this court and without asking the government, therefore explains the following:

- 1- Article (2/1st), which stipulates that the Commission is linked to the Council of Representatives and its responsibility to it, violates the provisions of the Constitution with the article (102) of which it stipulates (subject to monitoring by the Council of Representatives) and control does not mean association with the Council of Ministers, which means that if the Constitution wishes to link it to the Council of

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Representatives, it will be mentioned within the bodies associated with it under article (103/2nd) of the Constitution and in accordance with the decision of the Federal Supreme Court, which stipulated that it should be attached to the Council of Representatives, as well as independent bodies are part of one of the authorities and their reference needs to be determined by the nature of the tasks they carry out in accordance with the law that defines these tasks, so they need to have a reference to which they are associated or supervised and cannot go without it, which is confirmed by the nature of the commission's mission in question is to follow up and review the subject of human rights, which is executive tasks, which must be linked to them as indicated earlier by the Council of Ministers and not the Council of Representatives, and The work of the Commission as indicated in articles (4 and 5) of the law under appeal is a purely operational task and work and it needs the state bodies and institutions, particularly the General Secretariat of the Council of Ministers, as the executive arm of the government permanently and continuously to exercise its functions and competences, which are outlined in the articles above, which violates the principle of separation of powers stipulated in article (47) of the Constitution, also the Commission must also be linked to the Council of Ministers, not the Council of Representatives, which can monitor it optimally in order to disrupt the duration of the Council of Representatives for the two end-of-term holidays, which lasted four months each year, and not to hold all its sessions and for many times because the quorum was not achieved as it is known and not to hold its

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sessions or committee sessions for up to several months at the end of each parliamentary session for candidates from deputies to conduct electoral advertising, conduct elections and prepare results. And the stage of objections until the Federal Supreme Court approves the final results of the elections to hold the first session of the Council of Representatives.

2- Article (2/2nd) of the above-mentioned law, which stipulates the right of the commission to open offices and branches in not incorporated governorates into a region, is contrary to the provisions of the Constitution in the following respects:

(Alif) It violates the direction of the Federal Supreme Court and the stability of its decisions in that every text carrying the state treasury financial burdens with it must ask the Council of Representatives the government or request its approval and it is not permissible to legislate any text that carries the state treasury financial burdens without taking its opinion when legislating or taking its approval because the subject of financial burdens related to the general budget of the state and the state treasury, which is an executive subject of the competence of the government to indicate whether the state treasury can cover the financial allocations to implement the law Or not.

(Beh) The government has not been questioned or approved to comment on the issue of opening branches and offices in this number and the logistical possibilities of the general policy of the competent state of the government following article (80/1st) of the Constitution as the general policy of the state are moving towards reducing the

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structure of the state and reducing government spending and opening offices in this number lead to an inflation of the structure of the state and increase the necessary expenses for it and increase the number of state employees.

3- Article 7 and 8 of the Law stipulate that (the Council of Representatives shall form a committee of experts comprising representatives of the Council of Representatives, the Supreme Judicial Council, the Council of Ministers, civil society organizations, and the United Nations Office for Human Rights in Iraq to select candidates in a national declaration) and article (8) of the Law stipulates that (the Council consists of eleven members and three reserves who have already been nominated by the Committee and are approved by an absolute majority of the number of attendees from the Deputies) The violation of the provisions of the Constitution by the previous articles of the Law is as follows:

(Alif) Violation of articles (78 and 80/1st) of the Constitution in terms of the mechanism for nominating and appointing members of the Council of The Commission who are in the degree of Director-General following article (16/3rd) of the Law, as their candidacy and appointment are the prerogative of the Government and not the competence of the Council of Representatives.

(Beh) The articles above violated the text of the article (61/5th) of the Constitution, which limited itself to the jurisdiction of the Council of Representatives to appoint those who mentioned clauses (Alif, Beh, Jim) of the article (61/5th) of the Constitution and did not nominate or appoint directors-general of state institutions without the Council of

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Representatives asking or inquiring the Government as it was the same knowledge of who deserved the degree of director-general of state officials or others and had the executive body and the information base that would enable it to do so without That this jurisdiction is owned by the Council of Representatives.

4- Article (8/2nd/Waw) of the Law, which stipulates (membership of the Board of Commissioners is required to be not sentenced to a crime against honor) is contrary to the provisions of the Constitution in terms of the following aspects:

(Alif) Crimes against honor are only (theft, breach of trust, fraud, blackmailing, and cheque without credit), which means that he may be a member of the other serious crimes stipulated in penal code No. 111 of 1969, including (murder, rape, sodomy, smuggling in all its forms, forgery, crimes against the internal and external security of the State and terrorism crimes) as they are not considered crimes against honor and the seriousness of the perpetrator of such crimes to the Board of Commissioners, which is contrary to the state's general policy of non-compliance. The appointment of criminal registry holders for ordinary crimes, how about the perpetrators of these serious crimes for the competence of the Council of Ministers to draw this policy following the provisions of article (80/1st) of the Constitution, which is an interference in the work of the government and a violation of the principle of separation of powers stipulated in article (47) of the Constitution.

(Beh) Violation of article (7) of the Constitution, which prohibits any entity or approach that adopts terrorism, atonement or sectarian cleansing, incites or paves the way for it, since those who belong to an entity or approach described above, such as ISIS and al-Qaeda gangs,

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are entitled to membership in the Council of Commissioners because belonging to such an entity or approach is not a crime against honor.

5- Article (12/7th) of the Law, which stipulates the authority of the Council of Commissioners (setting rewards for employees of the Commission and the conditions for granting them) without restricting the Council itself to a system prepared and approved by the Council of Ministers, which leads to the text of the article above being contrary to the provisions of the Constitution from the following aspects:

(Alif) Violation of article (80/1st) of the competence of the Council of Ministers to draw up public policy in all areas, including public policy in the granting of rewards and their annual amounts and public policy is geared towards reducing government expenditures, especially in the field of rewards.

(Beh) Violation of article (47) of the Constitution because this is an interference in the work of the executive branch competent to issue regulations to implement laws.

(Jim) Contrary to what the Federal Supreme Court has settled for not asking the government about the financial burdens these bonuses carry for the State Treasury or taking the approval of the Council of Ministers.

6- Article (13/1st, 2nd, and 3rd) of the Law, paragraph (1st) stipulates (that the Council issues special rules of service and personnel who works in the commission), and Paragraph (2nd) stipulates that (the rules of service for commission workers are submitted to the Council of Representatives for approval) and the provisions of the above-mentioned violation of the Constitution in the following respects:

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(Alif) Articles (78 and 80/3rd) of the Constitution for the competence of the Council of Ministers to issue regulations to implement laws, including articles relating to the rules of service.

(Beh) Article (80/1st) of the Constitution for the competence of the Council of Ministers to draw up the general policy of the state, including public policy in the field of rules of service and the personnel in the state.

(Jim) Article (47) of the Constitution interferes with the competencies of the government and violates the principle of separation of powers.

(Dal) Contrary to what the Federal Supreme Court has decided that the government must be asked or inquired for the event of financial burdens borne by the State Treasury, which is represented by bonuses and promotions arising from the rules of service for employees, which made the issue of its issuance by the Council of Commissioners and approved by the Council of Representatives, which is an executive matter for the government.

7- Article (14/3rd) of the law, which includes that the Commission receive financial resources from home and abroad after the approval of the Council of Representatives by an absolute majority, violates the Constitution in the following respects:

(Alif) Violation of the text of the article (80/1st) of the Constitution for the competence of the government to draw up the general policy of the state, including the policy of accepting grants and assistance from home and abroad because of its relation to the issue of sovereignty and the security aspect and the political influence of other countries and the possibility of their interference in Iraqi affairs.

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(Beh) Article (78) of the Constitution as the Prime Minister is directly responsible for the state's public policy, including the policy of grants, assistance, and funds received by the country at any address.

(Jim) Article (47) of the Constitution for the interference of the Council of Representatives in the competencies of the government and violation of the principle of separation between powers.

8- Article (15/9) of the law, which stipulates (the membership of the President and members of the Council shall end by sentencing him to a crime against honor), which is contrary to the Constitution in the following respects:

(Alif) Violation of article (80/1st) of the Constitution, which is the competence of the government to draw the public policy of the state by not holding the highest positions of the perpetrator of a crime and not only breach of honor, since the crimes against honor are theft, breach of trust, fraud, cheating, and cheque without credit.

9- Article (16/1st, 2nd, and 3rd) violates the following constitutional texts:

(Alif) Article (80/1st) of the Constitution for the competence of the Council of Ministers to draw up the general policy of the state, including the identification of special and functional degrees in the state to regulate this subject in terms of planning at the state level.

(Beh) Article 78 of the Constitution is the competence of the Prime Minister as the direct executive officer of state policy.

(Jim) Article (47) of the Constitution to bypass the Council of Representatives on the terms and functions of the Council of Ministers and to violate the principle of separation of powers.

(Dal) What the Federal Supreme Court has settled for not asking, inquiring, or agreeing to the financial burdens that carry the State

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Treasury due to the privileges, salaries, and special grades allocated described in the text in question.

10- Article (16/4th) of the Law stipulates that (the President, Vice President, and members of the Council shall enjoy immunity during their time of working in the Commission) and the text violates the Constitution in the following respects:

(Alif) Article (63/2nd) of the Constitution to limit the Constitution exclusively to granting immunity only to members of the Council of Representatives, since immunity is exceptional from the original in the constitution drawn up by article (14), which is that Iraqis are equal before the law and article (19) the judiciary is independent and has no authority over it other than the law and the exception is unlike the original, which may not be expanded.

(Beh) Violation of articles (14 and 19) of the Constitution as people are equal before the law and there is no authority over the judiciary except the power of law.

11- Article (6) of the Law must be the approach to the Council of Ministers as the party of association, not the Council of Representatives, and this provision is contrary to the articles (78, 80/1st, and 47) of the Constitution as indicated above.

12- Article (9) of the Law must be sworn in by the President and members of the Council before the Prime Minister for violating articles (78, 80/1st, and 47) of the Constitution.

13- Article (12/4th, and 5th) of the Law must submit the annual report, action plan, and budget of the Commission to the Council of Ministers for violating its submission to the Council of Representatives. Articles (78, 80/1st, and 47) of the Constitution.

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- 14- Article (13/2nd) of the Law must be defined by a system issued by the Council of Ministers, thus violating the text of articles (78, 80/3rd, and 47) of the Constitution because the competence to issue regulations to implement laws for the Council of Ministers based on an article (80/3rd) of the Constitution.
- 15- Article (14/3rd) of the Law must be approved for the funds received by the Commission from the Council of Ministers, not the Council of Representatives, for violating articles (78, 80/1st, and 47) of the Constitution, since the planning and implementation of the state's policy is the competence of the Council of Ministers.
- 16- Article (15/2nd) of the Law must recommend the termination of membership to the Council of Ministers, not the Council of Representatives, for violating that article (61/5th/Beh, and 47) of the Constitution, as article (61/5th/Beh) of the Constitution which charted the way for the appointment of the holders of the grades for the proposal of the Council of Ministers and the approval of the Council of Representatives and therefore the completion of membership by the appointment mechanism itself.
- 17- Article (15/3rd) of the Law must be exempted by the President of the Council of Commissioners by decision of the Council of Ministers and the approval of the Council of Representatives whether it is a special grade not starting with the exemption from the Council of Representatives for violating the articles (61/5th/Beh, 78, and 47) of the Constitution and what the Judiciary of the Federal Supreme Court has agreed that such a body must be linked to the executive power as indicated above and because article (61/5th/Beh) of the Constitution has drawn the way to appoint holders of special degrees At the suggestion of the Council of Ministers and with the approval of the Council of Representatives, it is said in the same manner that

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he was appointed, unless it is a vote of no confidence, the dismissal shall be in accordance with the procedures stipulated in article (61/8th/Heh) of the Constitution, for the reasons given by the plaintiff's request to rule that articles (2/1st and 2nd), (6), (7), (8) and (8/2nd/Waw), (12/7th), (13/1st, 2nd, and 3rd), (14/3rd), (15/9), (16/1st, 2nd, 3rd), (16/IV), (9) and (12/IV, 5th, (13/2nd), (14/3rd) and (15/2nd and 3rd) of the Independent High Commission for Human Rights Law No. (53) of 2008 and the defendant's charges, fees and legal fees. After checking the case in the number (43/federal/2019) based on an article (1/3rd) of the Bylaw numbered (1) of 2005 and notifying the petition to the defendant/being in this capacity, which answered the regulations of his agent dated 20 May 2019, which stated:

- 1- The failure to explicitly refer to the Constitution's association with the Council of Representatives does not entail the need for it to be associated with the Council of Ministers, as the Agent of the Plaintiff claims, and if the Constitution wishes to link it to the Council of Ministers, it will not explicitly state this, as it did for other bodies, and the plaintiff did not provide evidence that the commission's submission to the control of the Council of Representatives does not allow it to be linked to the Council of Ministers and the Constitution does not prevent the entity from being subject to the control of a authority and linked to it at the same time, moreover, in its numbered decision (88/Federal/2010) on 8 January 2011, the Federal Supreme Court also indicated in examining the reference of independent bodies whose association with the Constitution did not specify their relevance (and their reference needs to be determined by the nature of their functions in accordance with the law specifying these functions, so they need to have a reference to which they are associated, supervised and cannot

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proceed without it) and that the nature of the functions of the High Commission for Human Rights is purely supervisory, not operational, and that the authority is not operational. which specializes in the oversight to which it should be associated is the Council of Representatives as the authority which monitors the performance of the executive power based on article (61/2nd) of the Constitution, but the need of the Commission to the state offices, especially the General Secretariat of the Council of Ministers, which requires linking it to the government, this defend is not successful, all state institutions, including the Council of Representatives and the judiciary, need to communicate with the state offices, and this does not mean linking it to the government, and the justification sought by the agent of the plaintiff to link the commission to the Council of Ministers because the Council of Representatives has legislative holidays and often does not hold its sessions because of the lack of quorum and preoccupation with elections, it turns out that the agent of the plaintiff omitted the financial and administrative independence of independent bodies and these bodies do not need those who are associated with them except within the limits of policy-making, which was clarified by the Federal Supreme Court in the concept of association, which is (the association of the commission and its president in the Council of Representatives or the Council of Ministers as stipulated in the Constitution when mentioning the word of association and takes over the reference that is related to It has to formulate its policy without interfering in its decisions, procedures and professional affairs because these bodies have been granted financial and administrative independence by the Constitution to ensure their neutrality and the independence of their decisions and procedures in

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their area of competence), also the plaintiff claim that the High Commission for Human Rights should be linked to the Council of Ministers is also reflected in the following remarks:

- That the government with its various bodies is the authority that is most affected by the citizens and therefore the most vulnerable to their rights and freedoms and is deliberately and without it and is responsible for prisons and places of detention and concerned with providing requirements for citizens to enjoy their rights and freedoms if linked to it, if linked to the Commission on Human Rights, it will be according to the government, which will make no sense of censorship and will make the government an opponent and a referee, which is not approved by the court.
 - Linking the commission to the Government would also have disastrous consequences for Iraq's international human rights reputation because the independence of national institutions concerned with the human rights file from the Government is an important criterion in the classification of those institutions and therefore the government associated with them is low because it is necessarily a voice for the government or our legislator for violations or defender at the very least, and linking the Commission to the Council of Representatives is a viable legislative option that has not been challenged by the Federal Supreme Court. And a reading when I discussed it in its aforementioned decision, although the Constitution did not provide for the commission's association with the Council.
- 2- The agent of the plaintiff also challenges paragraph (2) of his list of the constitutionality of article (2/2nd) of the law in question because the opening of offices of the Commission and branches in the governorates and regions carries financial burdens on the state

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treasury and that it is contrary to the government's tendencies to reduce the structure of the state, as the response is that the establishment of a human rights commission is a matter for the Constitution and perhaps one of the requirements for this constitutional body to carry out its functions must have representation in all provinces like all other independent bodies and ministries. The government has never complained about the existence of offices and branches of any of these institutions except what is now related to the Commission on Human Rights, but the case of assigning the state treasury financial burdens is a claim that the government has always protested and relied on to oppose certain laws without others, it is necessary to distinguish between burdening the state with financial burdens, which is self-evident, which often entails the generalist of the legal texts and the burden of the state on financial burdens that the state treasury cannot bear, in which case the government must show evidence of its financial inability to bear those burdens until the court decides that the text carried by these burdens is unconstitutional, but the mere burden of the state is a reason to rule unconstitutional, no matter what. These burdens are simple, it will paralyze the state institutions, especially those that the Constitution provides for, and the argument of assigning the state financial burdens is a selective argument used by the government on laws without others and at times without others.

- 3- The Plaintiff challenges paragraphs (3) and (9) of his list of the constitutionality of articles (7), (8) and (16/1st, 2nd and 3rd) of the law under appeal on the grounds that the mechanism for nominating and appointing members of the Commission's Board should Be by the government because they are in the degree of

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director general and that their appointment by the Council of Representatives violates articles (78) and (80/1st) of the Constitution and that the Council is competent only to appoint those mentioned in paragraphs (Alif, Beh, Jim) of article (61/5th) From the Constitution, this argument states that the constitutional articles cited by the plaintiff do not refer to the competence of the Government to appoint directors-general of state institutions, so that the basis of these provisions is not productive, because the competence of the Council of Ministers in appointing directors-general is relying on civil service No. (24) for 1960 (amended) in the article (8/2) of which, on the other hand, members of the Council of Commissioners are not general directors but are in the degree of directors-general, and the Constitution or the law did not provide for the exclusive jurisdiction of the Council of Ministers to appoint those who are in the rank of Directors-General, and the law of the authority indicates who is in the rank of director-general.

Article 7 of the Commission Law also provided for the membership of a representative of the Council of Ministers on the Committee of Experts selecting candidates for the Commission's Board of Commissioners, which ensures that the Government makes its point of view on the candidates and evaluates them in accordance with the database referred to by the agent of the plaintiff, and the appointment of the President of the Commission Council with the rank of Minister and Deputy Minister has nothing to do with the competences of the Council of Ministers, because the Court has approved the appointment of many categories of those with grades without requiring the approval of the Ministers such as council advisers of the state in some titles in the judiciary, as well as numerous laws that the

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Government has not objected to, provide for the appointment of debate holders without the need for cabinet approval, such as the appointment of similar grades to other independent bodies and the appointment of governors and their deputies.

- 4- The plaintiff challenges paragraph (4) and (8) of his list the constitutionality of article (8/2nd/Waw) and article (15/9) of the law under appeal on the grounds that it failed to govern the candidate for membership of the Board of Commissioners and the reason for the expiry of Membership of the President and members of the Council of Commissioners for the crime against honor, which is several contrary to the provisions of article (80/first) of the Constitution and represents interference with the work of the government and therefore constitutes a violation of article (47), the answer is that the constitutional articles alleged to violate them have nothing to do with the relative or From afar the article is being challenged and the text represents an irrefutable legislative option and the committee of experts selecting candidates for the Commission Council can adopt negative information against candidates to decide not to support their candidacy, but the claim to violate the text challenged article (7) of the Constitution, which banned any entity or approach that adopts terrorism, atonement, sectarian cleansing or other crimes, is answered by the Law prohibiting the Baath Party, entities, parties, racist, terrorist and takfir activities No. (32) of 2016, which ensures the protection of state institutions from the use of those involved in such crimes.
- 5- The appeal against article (12/7th) and (13/1st, 2nd, and 3rd) is answered by the fact that the commission is a body with administrative and financial independence and the effects of this independence to determine the rewards of its employees and issue

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rules of service and owners without interference by any other authority, otherwise, the meaning of financial and administrative independence will not be eliminated, and the commission is not absolute in determining the rules of service, staff and rewards of its employees, it is restricted by the owners approved by the Ministry of Finance and restricted by what the Ministry funds. For the compensation chapter for employees. The state budget law and law enforcement instructions provide these powers to state institutions every year without the government or the Ministry of Finance objecting, but the desire to subject independent bodies to government decisions in every small and large under the pretext of articles (80/1st, 47 and 78) of the Constitution, this should not be relied upon because the system of government and administration in Iraq is not central and that not all state institutions are according to the government and their responsibility to formulate public policy and the state does not have to subject these institutions to the power of the government and its absolute control, but the argument of financial burdens we repeat what is stated in the paragraph (2) of the draft.

- 6- The agent of the plaintiff challenges paragraph (7) of his draft to the constitutionality of article (14/3rd) of the law on the grounds of violating articles (80/1st, 78, and 47) of the Constitution, although these constitutional texts do not relate to the article in question, and if the Prime Minister is directly responsible for the public policy of the state does not intersect with the competencies provided by the laws for other state institutions, the Prime Minister is competent in the public policy of the state and not the policies of state institutions drawn by their laws.

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- 7- In paragraph (10) of his draft, the agent of the plaintiff challenges the constitutionality of article (16/4th) of the challenged law, which stipulates that the President, Vice-President and members of the Commission's Council enjoy immunity during their working time in the Commission based on violating the provisions of articles (63/2nd, 14 and 19) of the Constitution. On the one hand, on the other hand, the nature of the work of the President, Vice-President and members of the Council of the High Commissioner for Human Rights requires that they be immune from prosecution because they are concerned with very serious and sensitive tasks and can perform them properly only after they have enjoyed immunity, and these tasks are stipulated in article (5) of the Commission's Law, including receiving complaints of past and subsequent violations of law enforcement, verifying their validity and carrying out preliminary investigations into violations of the rights of the Commission. Human beings and the movement of related cases and visiting prisons and others, tasks that bring the Commission's Council in contact with important and sensitive files and maybe at the intersection with influential security and military agencies and authority, which requires the provision of effective tools to promote those burdens.
- 8- The plaintiff challenged paragraphs (11, 12, 13, 14, 15, 16, and 17) from his draft of articles (6, 9, 12/4th, and 5th) and (13/2nd), (14/3rd), and (15/2nd and 3rd) of the law under appeal based on its violation of the articles referred to by the plaintiff of the Constitution and all the paragraphs he mentioned do not refer to a real violation of the Constitution but mention matters under the title that should be entrusted to the government and not It shows a

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basis for the duty he claims, but based on an assumption he made at the beginning of his list, so the defendant's agent requested that the case be dismissed and that the plaintiff be charged with all judicial expenses and after completing the proceedings based on an article (2/1st and 2nd) of the Bylaw No. (1) for 2005. A date was set for the case and on the appointed day, the plaintiff, Legal Counsel Hayder Al-Sofi, and the defendant's agent, Legal Counsel Haitham Majid Salem attended the public summons, and the plaintiff submitted an answering draft on 9 May 2021 in response to the draft submitted by the defendant's agent, the court heard the agents of both parties, which came in its entirety as a repetition of the corresponding regulations, as the plaintiff added that the law is a proposal of a law submitted by the Council of Representatives following constitutional procedures but without taking the approval of the government on the financial burdens it contains, as he answered on the question of the defendant's agent addressed through the court to the plaintiff that he is currently requesting consideration of the constitutionality of the text that guarantees the commission's association with the Council of Representatives and has no right to request otherwise. Following the jurisdiction of the court, i.e. he does not have to request that it be linked to the Council of Ministers following his answer to the question of the defendant's agent in the minutes of the hearing of 30 June 2021, as requested by the defendant's agent to introduce a third person in the case for clarification, the court decided to reject the application to complete the court's examinations in this case and there is no justification for answering the request and after the court heard the last statement of the agents of the parties announced the end of the argument of the case and issued the following decision:

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The decision:

When scrutinizing and deliberating the defenses and requests of the agents of the parties and what was contained in the regulations exchanged between them and the statements edited controlled, the court found that the agent of the plaintiff Mr. Prime Minister/ being in this capacity requested a ruling on the unconstitutionality of the articles (2/first, second, 6, 7, 8 and 8/2nd) 12/7 and 13/1st, 2nd, 3rd, 14/3, 15/9 and 16/1st, 2nd, 3rd, 16/4th, 9, 12/4, 5th and 13/ 2nd, 14/3rd and 15/2nd and 3rd) of the Independent High Commission for Human Rights Law No. (53) of 2008 and to burden the defendant all the judicial expenses for the reasons contained in the petition and the reasons he cited in his statements and the draft submitted by him and referred to earlier, but the defendant's agent, Mr. Speaker of the Speaker of Representatives, in addition to his job, requested that the case be dismissed for the reasons presented in his answering draft dated 20 May 2019, which the court had already mentioned in detail in the preamble to this judgment and through the court's scrutiny of the plaintiff's claims, requests and motions of the defendant and his requests, and the Court reached the following:

First: With regard to the appeal contained in article (2/1st and 2nd) of the law, which stipulates (1st: a commission in the name of the High Commission for Human Rights is established with moral personality and has financial and administrative independence and has its headquarters in Baghdad and is linked to the Council of Representatives and is accountable to it) and the plaintiff considers that the constitutional imbalance in this article lies in its violation of the provisions of article

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(102) of the Constitution, which stipulated that this commission is subject to the control of the Council of Representatives and control means not the meaning of association and if the constitutional legislator wants to link it to the Council of Representatives expressly stated this as stated in article (103) of the Constitution, and the Commission has functions of an executive nature, which must be linked to the Council of Ministers, and its association with the Council of Ministers guarantees its control in order to disrupt the Council of Representatives for four months. The Commission is a supervisory and this requires linking it to the legislative authority because it is competent to control but the need for state agencies also does not justify linking it to the Council of Ministers, as well as the existence of holidays in the Council of Representatives, does not justify linking the Commission to the Council of Ministers because the Commission is administratively and financially independent and does not need the associated parties only within the limits of policy-making, but linking the Commission to the Council of Ministers will make it subordinate to the government and will make no sense of control and make the government an adversary and a referee at the same time, and this link has serious consequences for Iraq's international reputation in the field of human rights as the institutions concerned with the human rights file It would be low if it was linked to the government because it would necessarily be a voice for the government, and linking the Commission to the Council of Representatives was a viable legislative option that the Federal Supreme Court did not challenge in its numbered decision (88/Federal/2010) on 8 January 2011. This court finds that the Constitution of the Republic of Iraq for 2005 and in chapter four touched on the subject of independent bodies in articles (102) to (108) and the constitutional legislator has stated the words (independent bodies subject to the control of the

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Council of Representatives and regulate their work by law in the article (108). 102) of the Constitution, while article (103/first) used the term (financially and administratively independent bodies and the law regulates the work of each body) and article (102) was devoted to the mention of the High Commission for Human Rights, the Independent High Electoral Commission, and the Integrity Commission. The article described them as independent bodies under the control of the Council of Representatives, while article (103/1st) returned the Central Bank of Iraq, the Financial Control Divan, the Information and Communications Authority and the mortmain offices independent bodies financially and administratively and confirmed paragraph (2nd) that the central bank is accountable to the Council of Representatives and is linked to the Financial Oversight Office and the Media Authority of the Council of Representatives and paragraph (3rd) linked to the mortmain offices to the Council of Ministers and this court finds differences and discrepancy in the terms of the two terms (independent bodies) and (financially and administratively independent bodies) supposedly intended by the constitutional legislator to be drawn to determine the true meaning that the constitutional legislator wanted because each word has its meaning because the legislator walks away from mobilizing words without an end he wants to understand and since it is at the heart of the work of this court to interpret the constitutional text to decide on a particular subject, which aims to determine the meaning of the constitutional text by giving, clarifying or affirming a particular meaning within a set of possible meanings or clarify the most important words of the Constitution and complete the short texts and produce what contradicts its provisions and reconcile its different parts, so we see that the mention of the constitutional legislator as the words of independent bodies without association or linking them to another term determined by its

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launch means the independence of the Commission on Human Rights complete independence from other authorities in the performance of their functions drawn by the Constitution and the law governing their work and independence in its own policy to achieve these tasks in addition to its financial and administrative independence, the content of which is that it has a legal system of its employees that supports its ability to perform its functions and independence in its administrative decisions to conduct its work aimed at realizing its purpose in establishing this commission, which is constitutionally and legally defined, and the addition of this independence described in the foregoing, the idea of linking this commission to the authority of the authorities is contrary to the idea of constitutionally confirmed independence and thus the court concludes that the legislative text adopting this idea adopts this idea There is a violation of a constitutional provision governing article (102) of the Constitution of the Republic of Iraq 2005 that requires the court to address this and return the legislator to its constitutional limits, which is not contrary to the constitutionally established authority of parliament in censorship, which was confirmed by article (102) mentioned above and has the use of constitutional means stipulated in article (61/8th/Heh) in order to ensure the effectiveness of this commission in achieving its objectives, because the constitutional legislator intends to determine the principle of control and independence in the performance of tasks at the same time is to achieve commission's goal of supporting and maintaining human rights and monitoring violations, not creating conflicting and intersecting power. As for paragraph (2nd) of the article (2) of the law, which stipulates (the Commission must open offices and branches in the governorates and governorates not incorporated into a region) which is faulted by the plaintiff that he carries financial burdens on the State Treasury without

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taking the government's approval when legislating and violates the government's approach to reducing the structure of the state and reducing government expenditures, which the agent of the defendant/ being in this capacity replied that the establishment of the Commission is a matter for the Constitution and that the requirements of its work require it to have offices in the governorates and regions, and the argument for challenging the constitutionality of laws to burden the State treasury with financial burdens would paralyze State institutions. This court finds that the nature of the work of this commission must have offices in the provinces and provinces, which is appreciated by the legislator and falls within its options in determining the structure of the Commission to achieve its goals and as he sees it, but the subject of financial burdens and protecting the state treasury from burdening its financial burdens, the legislator has created effective remedies for this subject in the Federal Financial Administration Law No. (6) of 2019 amended, no unit of expenditure may exceed the allocations allocated to it in the Federal Financial Administration Law No. 6 of 2019 amended. Federal Budget Law on any form of exchange and for any reason based on Article (15/1st) of Law No. (6) of 2019 and any law that arranges disbursements on the budget should be applied from the following year to establish the necessary allocation based on an article (18/2nd) of this Law, so this court does not consider any constitutional breach of paragraph (2nd) of the article (2) of the contested law.

Second: Concerning the appeal listed in the article (6) of the Law, which stipulates (ministries and entities not associated with the Ministry and independent bodies have all the obligation to submit documents, data, statistics, and information related to the work and functions of the Commission at a specified date and the Commission should approach the Council of Representatives in the event of non-compliance of the

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aforementioned entities), where the plaintiffs are faulted for violating the articles (78, 80/1st) and (47) of the Constitution where the approach must be, as he sees it, to the Council of Ministers. This court finds that this provision is a regulatory text that does not violate any constitutional text and does not conflict with the principle of separation of powers provided for in article (47) or the competence of the Council of Ministers in the planning of policy in the article (80/1st) of the Constitution and its implementation in the article (78) of it, as well as the fact that it informs the Council of Representatives of the approach of the parties mentioned in the above article in the extent to which they cooperate with the Commission to achieve its objectives in support of the oversight aspect of the Representatives.

Third: Concerning the appeal of Article 7, which stipulates that the Council of Representatives shall form a committee of experts of no more than fifteen members, including representatives of the Council of Representatives, the Council of Ministers, the Supreme Judicial Council, civil society organizations and the United Nations Office for Human Rights in Iraq, the selection of candidates in a national declaration and the plaintiff's fault that this article belongs to those who are in the degree of director-general following article (16/3rd) of the law so that their candidacy and appointment are the responsibility of the government and it is not the competence of the government. The Council of Representatives also violated the provisions of Article (61/5th) of the Constitution, which limited itself to its terms of reference, not including the nomination and appointment of directors-general and the agent of the defendant argued that the competence of the Council of Ministers in appointing directors-general was based on the Amended Civil Service Law (24) of 1960, that members of the Board of Commissioners were not directors-general, but at the level of directors-general, and that the

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Constitution did not provide for the competence of the Council of Ministers to appoint them, that the judiciary of this court approved the appointment of those who were minister and deputy commissioner with the rank of deputy minister, and many laws approved the appointment of categories of these grades in the Council of State or in the judiciary without the approval of the Council of Ministers and this court find that the legislator, when he was keen in the article above to form a committee of experts from the three authorities, civil society organizations and the United Nations Office for Human Rights in Iraq to select the candidates of the Council of the Commission, was in line with the will of the constitutional legislator expressed in article (102), which tended to be independent of the rest of the authorities in the performance of its functions, and the solutions of the legislator in article (7) of the law to challenge were successful solutions that was entrusted to a constituent committee These experts are representatives of different entities to achieve the selection of candidates, thereby ensuring that the members of the Commission's Council, including the President and Vice-President, are not subordinate to any state authority, and this supports the above from the point of view of this court in paragraph (1st) of the decision regarding the unconstitutionality of linking the Commission to the legislative authority, as for the fact that this article is contrary to article (61/5th) of the Constitution and the legal authority of the Council of Ministers and the legal authority of the Council of Ministers listed in the Civil Service Law No. (24) of 1960 article (8/2) of it, as article (80/5th) concerns the power of the Council of Ministers to recommend to the Council of Representatives to approve the appointment of ministers, ambassadors and private grades to the latest article, but article (8/2) of the Civil Service Law stipulates the power of the Council of Ministers to appoint or reappoint certain titles, including

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directors-general, at the suggestion of the Minister and approval of the Council of Ministers with regard to the constitutional text applies to ministers and private administrators working in the executive branch and not those who are ministers in other authorities and to say otherwise completely executes the principle of separation of powers listed in article (47) of the Constitution, but in relation to directors-general, the authority of the Council of Ministers is contained in the Civil Service Law and the unconstitutionality of the Commission Law in article (7) in question cannot be invoked for violating other legislation that is lower than the Constitution in the Civil Service Law. His rank and that the defendant/ being in this capacity find what he sees as solutions provided that he does not violate a constitutional provision and the conclusion in the foregoing that this court considers that the defendant does not violate the constitutional provisions concerning article (7) of the law in question.

Fourth: The plaintiff challenged article (8) of the Law in two ways, generally challenging the article in all its paragraphs, challenging article (7) of the Law in paragraph (3rd) of the Regulations and then challenging paragraph (4) of the regulation in paragraph (2nd/Waw) From this article, this court considers that the article (8) of the law in its paragraphs (1st) and (2nd/Alif, Beh, Jim, Heh, Waw, Zin), (3rd), (5th), (6th) and (7th) which Concerning the power of the Council of Representatives to approve by an absolute majority the number of attendees to choose who is nominated by the committee formed under article (7) of the Law and the conditions of membership of the Council, in which the legislator took into account that an Iraqi residing in Iraq must be permanently resident, that he should be at least thirty-five years old, have a preliminary university degree, be experienced in the field of human rights, who are not members of political organizations and are not prohibited from

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membership of the Council under the Accountability and Justice Law and the method of selecting a president council and the manner in which the President and Representatives Council are chosen by secret election and representation of women by at least one-third of its members and represent minorities in the Council with at least one original member and another reserve, as well as the duration of membership in the Council for four years, and the President is the legal representative of the Commission, all these legal texts do not find the court in it any violation of a constitutional text of the texts listed in the 2005 Constitution, but otherwise consider that the legislator observed in these texts the constitutional rules listed in the Article 2 of the Constitution that Iraq is a country of multi-nationalities, religions and sects and what listed in the article 7 of the Constitution concerning the membership of those covered by the Accountability and Justice Law and article 14 of the Equality of All Iraqis before the Law, which took into account the independence of the Commission, is that the members of the Council shall not be members of political organizations, but that the paragraphs (3rd, 6th, and 7th), which are rules for regulating the work of the Commission and do not exceed the limits of the Constitution, as well as paragraph (2nd/Waw) of article (8) which stipulates (to be good conduct and not convicted of an offence of inadmissible) Honor) which the plaintiff was accused of stating only that he was not sentenced to a crime against honor and did not mention other serious crimes listed in the Law (111) of 1969 and thus violated article (80/1st) as the state's public policy is directed towards not appointing criminal registrants as well as not mentioning terrorist and sectarian crimes and thus violating the provisions of article (7) of the Constitution and this court considers that the case against the plaintiff in this paragraph is not based on constitutional grounds that can be relied upon to determine the

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unconstitutionality of the above text, because the crimes against honor listed in the article (21/6) of the Penal Code No. (111) of 1969 were mentioned to name but a few, namely theft, forgery and breach of trust. Fraud, indecent assault and bribery, and the Iraqi legislator has committed numerous crimes against honor, including terrorist crimes under the Anti-Terrorism Law No. 13 of 2005 (Article 6), on the one hand, and the officer of good conduct The conduct required by the legislator to the member of the Commission's Council is sufficient to exclude any person who has committed a serious crime, so when reasons have been given regarding article (8) of the law in question, the plaintiff's request is eligible to be rejected.

Fifth: Concerning the challenge (article 12/7th), which stipulated (setting rewards for the commission's employees and conditions of granting them), which was considered the authority of the Board of Commissioners, as well as the challenge to the article (13/1st and 2nd) of the law, which reads (first: the Council issues special rules of service and staff to commission's staff within the first month of its commencement of operation). Second: The rules of service for commission employees are submitted to the Council of Representatives for approval, where the plaintiff faults these texts as contrary to the article (80/1st) for the competence of the Council of Ministers. By drawing up public policy in all areas, including the policy in granting bonuses and their annual amounts and the direction of the state towards reducing government expenditures and violating the provisions of article (47) because it interferes in the work of the executive power because it is the authority competent to develop regulations to implement laws, including articles related to the rules of service and what the court has agreed on, the government should be asked in case of financial burdens borne by the state treasury. The defendant's agent responded to these

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arguments that the commission enjoys financial and administrative independence and the effects of this independence have the right to set rewards for its employees and issue rules of service. The commission is restricted by the staff approved by the Ministry of Finance and restricted by the Ministry's funding of the workers' compensation section and the Court finds that the above texts were consistent with the concept of independence, the content of which was subjected to the Court in paragraph (1st) of the decision of the judgment and the denial of authority by the Commission to issue special rules of service. The personnel of the employees and the power to determine rewards violates the principle of independence affirmed by the Constitution in articles (102 and 103) on the one hand, and on the other hand, the Ministry of Finance has a role in determining this authority by approving the staff of the Commission as well as the ministry's financial allocations to the commission, as well as the authority of the Commission is also restricted by budget laws that are supposed to be issued annually by the legislative authority based on a draft prepared by the Council of Ministers as well as by the provisions of the Financial Administration Law No. (6) of 2019. Therefore, in the advanced texts, the Court finds no violation of a constitutional provision and the request for it is worth responding to be rejected.

Sixth: The plaintiff also challenged the article (15 paragraph 9) and the court did not find a paragraph in the paragraphs of this article in this figure, so it decided to reject the request, as did the plaintiff's agent in article (15) paragraphs (2nd and 3rd) which read (second: the Speaker submits to the Council of Representatives the recommendation to end the membership and is approved by an absolute majority in cases listed in the article (15/1st) of the Law. (Third: The President shall be relieved of his post by a decision of the Council of Representatives, which shall

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be taken by an absolute majority at the request of the Council of Representatives for the reasons listed in article (15/1st)), where the plaintiff considers that the recommendation to end membership should be submitted to the Council of Ministers, not the Council of Representatives, for violating the articles (61/5th/Beh and 47) of the Constitution because article (61/5th, Beh) has charted the way for the appointment of holders of special grades for a proposal by the Council of Ministers and the approval of the Council of Representatives and therefore the mechanism of termination of the membership itself is the mechanism of appointment as well as exempting the Chairman of the Council of Commissioners by decision of the Council of Ministers and the approval of the Council of Representatives whether it is a special grade not to be exempted from the Council of Representatives for violating articles (61/5th/Beh, 78 and 47) of the Constitution and what the judiciary of this court has agreed to in connection with such a body with the executive power and after the court has been informed of the answering draft of the agent of the defendant/ being in this capacity, this court considers that the paragraphs (2nd and 3rd) are only a detail of the original constitutional right of the Council of Representatives to exempt officials of independent bodies enshrined in article (61/8th/Heh) of the Constitution, and the legislator in drafting these texts was not prepared or exceeded the content of the above text, so the plaintiff's request in this regard should also be rejected.

Seventh: The plaintiff also challenged article (9) of the law, which stipulates (the President and members of the Council shall be sworn in before the Council of Representatives and as follows (I swear to Almighty God that I would give my legal and professional responsibilities honestly, dedication and sincerity and work to accomplish the tasks entrusted to me independently, impartially and

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God, as I say, is a witness) where the plaintiff considers that the President and members of the Council should take the oath of office before the Prime Minister for violating this articles (78, 80/1st and 47) of the Constitution and this court did not find any linking between the constitutional texts mentioned by the plaintiff to the above text that the swearing-in before the Council of Representatives also does not violate or prejudice a constitutional provision following the legislative text of the article (9) so that the plaintiff's case is also worthy to be rejected.

Eighth: The agent of the plaintiff/ being in this capacity also challenged the text of the article (12/4th, and 5th) which states (fourth: submit an annual report to the Council of Representatives containing the achievements of the Commission and its action plan, fifth: propose the budget of the Commission and submit it to the Council of Representatives for approval) where the agent considers the plaintiff must submit the annual report, action plan and budget of the Commission to the Council of Ministers and not to the Council of Representatives to violate articles (78 and 80/first) of the Constitution and (47) of it and this court considers that what is stated in paragraph (5th) Article 12 on the submission of an annual report on the commission's achievements and action plan to the Council of Representatives, this text is in accordance with the constitutional text listed in article (102), which stipulates the principle of monitoring the Council of Representatives of independent bodies, including the Office of the Human Rights Commission, since it is a requirement of observation to inform the Council of Representatives of the commission's action plan and annual achievements in the field of human rights and the performance of its functions in general in preparation for accountability or not on the basis of article (61/8th/Heh) of the Constitution, so the Court does not find any infringement on the

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constitutional texts mentioned by the agent of the plaintiff. His request for this is also worth being rejected. As for article (12) paragraph (V) of article 12, this court finds that article (80/4th) of the Constitution has prepared the draft budget exclusive powers of the Council of Ministers except in article (91/3rd) which gave the Supreme Judicial Council the power to propose the draft annual budget of the judiciary and that the submission of the general budget is also an exclusive authority of the Council of Ministers based on an article (62/1st) of the Constitution and therefore any legislation does not take into account what these texts lose constitutional status and must be assessed, so the requests of the plaintiff in addition to his function to rule that paragraph (5th) of the article (12) is unconstitutional are based on reasons for approval of the provisions of the Constitution and are worthy of answering.

Ninth: the agent of the plaintiff also challenged article (16/ 1st, 2nd, 3rd, and 4th) of which states (first: the Commission is headed by a president with the rank of minister. Second: the Vice-President shall be the rank of undersecretary. Thirdly, council members enjoy the rank of Director-General. Fourthly, the President, his Deputy and council members enjoy immunity during their time in the Commission) and the plaintiff considers that paragraphs (1st, 2nd, and 3rd) violate the text of the article (80/1st) of the Constitution because it is the Council of Ministers that deals with the drawing of state policy, including the determination of state policy. Special and functional grades at the state level also violate article (78) of the Constitution because it is the competence of the Prime Minister to implement the state policy. It also violates article (47) to violate the principle of separation of powers and this court has already discussed the nomination and appointment of the President and members of the High Commission for Human Rights in paragraph (3rd) of the decision and has reached that the competence of the Council of

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Ministers provided for in article (80/5th) of the Constitution on the recommendation to the Council of Representatives to appoint ministers and ambassadors and its authority to appoint directors-general listed in article (8/2) of the Civil Service Law No. (24) of 1960 goes to these addresses operating in the executive power and to say otherwise wastes the principle of separation between the powers listed in Article (47) of the Constitution, therefore, what listed in the paragraphs (1st, 2nd, and 3rd) from the article (16) of the law in question is only the prerogative of the legislature where it does not exceed the provisions of the Constitution and therefore the requests of the plaintiff shall be dismissed as well. This court finds that the origin is that Iraqis are equal before the law without discrimination based on sex or race, nationalism, origin, or color or religion, doctrine, belief, opinion, economic or social situation, as stipulated in article (14) of the Constitution, that litigation is a guaranteed right to all, and that everyone has the right to be treated fairly in judicial and administrative proceedings, which is stipulated in article (19/3rd and 6th) of the Constitution and that the judiciary is an independent power and is administered by courts of all kinds and degrees and makes its decisions following the law, and perhaps censorship and prosecution are the essences of the independence of the judiciary because of its association. The principles of the rule of law and the separation of powers, and the independence and authority of the judiciary remain a principle if the legislature can limit the right to litigate, and only the Constitution is competent to regulate and restrict the powers of the authorities it has established, and it is not normal for the legislature to restrict the judiciary, an inherent constitutional authority that derives its existence and entity from the heart of the Constitution and the outcome that the Court considers that any legislation limiting the authority and independence of the judiciary is

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one that wastes a number of constitutional principles on which the democratic system is built, namely the origin of equality between citizens, the principle of separation of powers, the principle of judicial independence, and ensuring the right to sue for all, all of which were adopted by the Constitution of the Republic of Iraq in 2005, so the assessment of the absolute immunity of any person and his removal from the jurisdiction of the judiciary is a clear violation of the constitutional provisions established by the Court above. Provided by the agent of the defendant to justify this immunity is the nature of the work of the President, Vice-President and members of the commission because they are concerned with very dangerous tasks and can perform them properly only after they have immunity because these tasks bring the commission Board into contact with important and sensitive files and maybe at an intersection with security or military agencies and this requires effective means to promote these burdens, as what the defendant's agent has indicated in paragraph (4th) of the article (16) of the law shall be answered. Accordingly, and for all reasons indicated in the items of this judgment (1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th), the Court concludes:

- 1- To judge by unconstitutionality of articles (2/1st), article (12/5th), and (16/4th) of the High Commission for Human Rights Law No. (53) of 2008.
- 2- To reject the plaintiff's claim to the Prime Minister/being in this capacity regarding articles (2/2nd), (6th), (7th), (8th), (8/2nd/Waw), (12/4th and 7th), and (13/1st and 2nd 3rd), (14/3rd), (15/1st/9th), (15/2nd and 3rd) and (16/1st, 2nd, and 3rd) of the High Commission for Human Rights Law No. (53) of 2008.
- 3- To burden both parties with proportional judicial fees and expenses.

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- 4- Sentencing the lawyer's fees to the plaintiff/ being in this capacity legal counsel Hayder Al-Sofi amount of 100 thousand dinars to be burdened by the defendant/ being in this capacity.
 - 5- Sentencing the attorney's fees to the defendant's agents/ being in this capacity as Director-General of the Legal Department Dr. Sabah Juma Al-Bawi, Legal Counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim amount of 100,000 dinars burdened by the plaintiff/ being in this capacity and distributed according to legal percentages. The decision was issued unanimously, final, and binding to all authorities based on articles (93 and 94) of the Constitution of the Republic of Iraq 2005 and article (5/1st) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) for the year 2021 on 30/Dhul-Qa'dah/1442 Hijri, 11 July 2021 AD.

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Signature of The president	Signature of The member	Signature of The member
Jasem Mohammad Abbood	Sameer Abbas Mohammed	Haidar Jaber Abed
Signature of The member	Signature of The member	Signature of The member
Haider Ali Noory	Khalaf Ahmad Rajab	Abdul Rahman Suleiman Ali
Signature of The member	Signature of The member	Signature of The member
Diyar Muhammad Ali	Ghalib Amir Shunayen	Ayoob Abbas Salah

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