

Republic of Iraq
Federal Supreme Court
Ref. 245 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 11/12/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ayman Neamat Saeed.

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Abbas Majeed Shabeeb.
2. The Secretary General/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed in the lawsuit petition that the second defendant's department (General Secretariat of the Council of Ministers / Legal Department) issued the letter No. (Qaf/2/5/42/4366) on 13/9/2023, attached to the letter of the Ministry of Culture, Tourism and Antiquities / Minister's Office No. (384) on 21/8/2023, which includes in paragraph (1) thereof, that the plaintiff's occupation of the position of acting advisor to the Ministry of Culture, Tourism and Antiquities is not authentic, and since this is unfair and violates his rights, so he took the initiative to challenge it before this court based on the provisions of Article (93/III) of the Constitution and for the following reasons: 1- Under valid legal circumstances, the plaintiff was appointed as Inspector General of the Ministry of Science and Technology under Diwani Order (28) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun/Dal 2/78/3980) on 16/3/2014, then he was appointed as Inspector General of the Ministry of Communications under Diwani Order (11/S) issued in the letter of the Prime Minister's Office No. (M.R.W/S/1326) on 19/6/2016, and then transferred as Inspector General Asala to the Iraqi

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Media Network under Diwani Order (22S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/14/1619) on 14/5/2019, and Law No. (24) of 2019, the law to cancel the dissolved Coalition Provisional Authority Order No. (57) of 2004, as well as the issuance of Cabinet Resolution No. (389) of 2019 as amended by Cabinet Resolution No. (464) of 2019, and because he enjoys a functional legal status based on Diwani Order No. (72) of 2008, and to include him in the provisions of paragraph (3) of the aforementioned Cabinet Decision, his services were transferred with the job grade (higher / A) and the financial allocation to occupy an authenticity consultant in the Ministry of Culture, Tourism and Antiquities under Diwani Order (459) issued in the Prime Minister's letter No. (Mim .Ra .Waw/Dal/7/25/20040) on 20/11/2021, The Ministry of Finance has stated its opinion in a clear and explicit legal manner in several correspondence to it, including its letter No. (20944) on 1/6/2023, which is the competent authority for public service affairs, that it is not permissible to consider an employee appointed on the permanent staff as an agent employee, and that the cancellation of Order (57) of 2004 does not mean the cancellation of their legal positions.2 - The court had previously issued its decision No. (218/Federal/2022) on 19/12/2022, which included the following: The transfer of the inspectors general appointed mainly to other positions in the ministries to which they are attributed and the authorization of the minister to reappoint them to the position of (deputy minister, adviser or general director) does not mean that they are covered by the provisions of Article (61/5th/Beh) of the Constitution because they have acquired legal status under Diwani Order No. (72) of 2008, which is still in force, and the dissolution of the offices does not mean the abolition of their legal positions, and therefore there is no legal basis to re-present them to the Council of Ministers to recommend to the Council of Representatives for appointment, and that those who have been transferred deserve the job titles to which they are transferred, provided that they are not higher than their previous addresses, it is not permissible to convert an employee on the permanent staff and appointed in his own capacity to an acting employee, contrary to the provisions of the law and without support from it. Beh- The inspector general who is not covered by retirement shall

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retain his same job grade in the government agency to which he is assigned and according to its staff, but the aforementioned decision empowered the minister to propose his appointment according to the need of the ministry and its vacant staff (Deputy Minister, Advisor or Director General), and the proposal for appointment does not mean re-appointment again because the employee may not be appointed twice in the same job grade, but rather the proposal for appointment of the appointed employee is intended to match the job grade with the grades of the Ministry's staff attributed to it according to the need of the Ministry and the grades allowed by its staffing in light of what the competent minister possesses from a discretionary authority aimed at the public interest and the proper functioning of the public office to ensure the continuation of the work of public utilities regularly and steadily. Jim -The role of the General Secretariat of the Council of Ministers shall be limited to the implementation of the decisions of the Prime Minister, after which the executive authority of the Council of Ministers and its decisions is responsible for following up and implementing those decisions, and it has no right to obstruct their implementation or object to such implementation contrary to the provisions of the Constitution and the law, and to say otherwise means suspending the decisions of the Prime Minister in his capacity as a representative of the Council of Ministers and directly responsible for the general policy of the State, and the Commander-in-Chief of the Armed Forces, who manages the Council of Ministers and chairs its meetings in accordance with the provisions of Article (78) of the Constitution, in a manner that leads to the emptying of the constitutional institution of its content, especially that the decisions of the Council of Ministers or the Prime Minister issued through the Prime Minister's Office on the basis of the discretionary power it enjoys, in light of the provisions of the Constitution and the laws in force, in the public interest and to ensure the proper functioning of public utilities regularly and steadily, are subject to the control of the competent constitutional institutions, including the Federal Supreme Court, based on its jurisdiction stipulated in Article (93/3rd) of the Constitution, and on the basis of the foregoing, it is not permissible to suspend these decisions or suspend their enforcement unless it is challenged by the methods prescribed by the Constitution and the laws in force and its

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validity is ruled invalid or suspended from its enforcement. 3- - The court had previously issued its decision No. (18/Federal/2023) on 3/4/2023, which stipulated ((Administrative and customs decisions and orders shall remain in force and their effects shall be arranged from the date of their issuance, unless they are withdrawn or canceled by the authority that issued them in accordance with the law or judged invalid by the judiciary, this requires compliance with it by all state institutions, to ensure the proper functioning of public utilities regularly and steadily)). 4- As well as the court's decision No. (120/Federal/2023) on 13/8/2023, which clarified that the plaintiff occupies his position in person and not as an agency, and stated that the insistence of the General Secretariat of the Council of Ministers to implement the Diwani order without justification is contrary to what was settled by the judgment of this court in this regard in many of its relevant rulings, including the judgment issued by it No. (218/Federal/2023), which is final and binding on all authorities, as well as its decision No. (164/Federal/2023), which stated that paragraph (1) was invalid. From the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Qaf/2/5/40/42/3211) on 5/7/2023, which referred to (The filling or transfer of senior positions by inspectors general is by assignment rather than appointment) It is clear that the inspector general is appointed incumbently not acting. 5- The court indicated in many decisions, including decision No. (6/Federal/2023) on 1/2/2023 that the judgment issued in the constitutional lawsuit, whether on the constitutionality of the contested text or unconstitutionality, prevents the court from considering the constitutionality of the text again, because the judgment issued by the court is absolutely authoritative based on the provisions of Article (94) of the Constitution, and its impact is not limited to the litigants of the lawsuit, but also extends to all those addressed by this text, which entails their benefit from the legal status that Created by the constitutional provision, whether it arranges benefits or holds rights, and that the plaintiffs in the above lawsuit are peers, and those with similar legal status, and since the decisions issued by the Court is final and binding on all authorities and persons, it is not permissible to accept any evidence that contradicts the authority of the final judgments in accordance with Articles (105 and 106) of the Evidence Law No. (107) of

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1979, as amended, and since the judgments issued by the Federal Supreme Court are not limited to the parties to the lawsuit only, and the ruling on the validity or invalidity of a particular text has absolute authority on all institutions and individuals, and applies to all, whether individuals or From the authorities of the state, and its impact is not limited to the litigants of the lawsuit, but extends to all those addressed by this text, which entails their benefit from the legal status created by the judgment, whether it arranges advantages or holds rights, and when the plaintiff requested this court to rule obliging the defendants to implement Diwani Order No. (459) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal/7/25/20040) in 20/11/2021, including the transfer of the plaintiff to the Ministry of Culture, Tourism and Antiquities and his occupation of the position of (Consultant of Authenticity at the highest grade / Alif), and the ruling that paragraph (1) of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/42/4366) on 13/9/2023 is incorrect, and charging the defendants fees, expenses and advocacy fees. The lawsuit was registered with this court at number (245/federal/2023) and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/I and II) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendants' agents responded with the response list dated 31/10/2023 and requested to dismiss the lawsuit due to the court's lack of jurisdiction to hear the case, as challenging the validity of administrative decisions is within the jurisdiction of the administrative judiciary, and to say otherwise is contrary to the provisions of the constitution, which specified the competencies for each party, and the court has already That it indicated its lack of competence to appeal the letters issued by the General Secretariat of the Council of Ministers, according to its decision No. (74/Federal/2023) on 30/5/2023, not to mention that the lawsuit lacks its legal basis because the Diwani order requesting its implementation No. (459) of 2021 is implemented by the Ministry and the Secretariat, and the plaintiff was not appointed authentically, but rather indicated that he occupied the position of consultant, which was not available at the time, as the number of special grade jobs under the entry into force of Law No. (23) of 2021 (The Federal Budget Law of the

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Republic of Iraq for the fiscal year 2021) is only six grades (including three grades of undersecretary - occupied, one degree of ministry advisor - occupied, and two special grades - occupied) and there is no vacant grade at the time to be filled by the plaintiff according to Table (C) Manpower for Ministries and Central Funded Departments for the year 2021, the annex to the law above, and the content of paragraph (3) of Resolution (398) of 2019, as amended by Resolution (464) of 2019, is clear, that the competent minister in the entity in which the inspector general was working to propose the position of undersecretary, adviser or director general, and that the text is clear in the proposal, which does not mean appointment, and the difference is clear between the two things, and that the text included that the minister proposes, and that the competent authority to issue the necessary decision against them is the Council of Ministers, and that if the minister nominates the inspector general for this job, it is issued by a decision of the Council of Ministers to appoint him, and if he is nominated for a job within the positions mentioned in the provisions of Article (61/5th) of the Constitution in force, the Council of Ministers shall recommend the appointment in accordance with the provisions of Article (80/5th) of the Constitution, and the statement of the Prime Minister's authority to transfer the Inspector General to the position of Director General means that there is an authorization from the Council of Ministers, we refer to the issuance of the Council of Ministers Resolution No. (341) of 2021 authorizing the Prime Minister to appoint general directors, and if this authority had previously been for him, the need to issue the decision would not have arisen above, and paragraph (3) does not apply to him in the first place, as he is an inspector general in the Iraqi Media Network and not in the Ministry of Culture, as for paragraph (2/c) of the appeal, the secretariat exercises its powers under the provisions of Law No. (20) of 1991, and the internal system No. (2) of 2019, under which it is obligated to follow Legal procedures regarding the appointment or assignment of holders of higher degrees, and it may not work otherwise as long as its decisions or orders are issued in accordance with the provisions of the aforementioned law and system, however, the Secretariat is committed to implementing Diwani Order No. (459) of 2021. After completing the procedures required by the Court's Rules of Procedure No. (1) of 2022, the

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court set a date for the pleading based on Article (21/3rd) thereof, and the parties shall be informed of it, and on the appointed day, the court was formed, so the plaintiff attended, and the defendants' agents attended, and the public presence argument proceeded, and the plaintiff repeated what was stated in the lawsuit petition and requested judgment according to what was stated therein, the defendants' agents answered and each of them requested to dismiss the lawsuit for the reasons stated in the attached regulation in the lawsuit papers, and each party repeated his previous statements And his requests, and where there is nothing left to be said, the end of the argument has been made clear, and the court issued the following judgment:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiff filed a lawsuit before this court against the two defendants (the Prime Minister and the Secretary-General of the Council of Ministers / in addition to their functions) to demand that they be obliged by virtue of the implementation of the Diwani Order No. (459) issued by the Prime Minister's Office No. (Mim.Ra.Dal./7/25/20040) on 20/11/2021 which includes (Ayman Nemat Saeed was transferred to the Ministry of Culture, Tourism and Antiquities and occupied the position of an authentic advisor at the highest grade/Alif), and the ruling that paragraph (1) contained in the letter of the General Secretariat of the Council of Ministers / Department is incorrect. Legal No. (Sin/2/5/42/4366) on 13/9/2023, which made the plaintiff occupy the position of legal adviser in the Ministry of Culture as an acting and not incumbent, as the General Secretariat of the Council of Ministers affiliated to the first defendant/ being in this capacity, refraining from implementing the aforementioned Diwani order, and on the basis that this is contrary to the provisions of the Constitution of the Republic of Iraq of 2005, the relevant laws in force and the decisions issued by this court in this regard, and that they charge fees, expenses and attorney's fees, and that the plaintiff bases the filing of the lawsuit on the provisions of Article (93/3rd) of the Constitution of the Republic of Iraq, and for public presence pleading and informing the court of the defendants' defenses through the mediation of their representatives

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contained in the regulation dated 31/10/2023, and during the pleading, the Federal Supreme Court finds the following:

First: From a formal point of view: The plaintiff's claim is admissible in form due to the fulfillment of the conditions for its establishment stipulated articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the interest condition stipulated in Article (6) thereof, and the fulfillment of the conditions stipulated in Article (25) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulates that (any interested party shall have a direct appeal with a lawsuit, submitted to the court to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority...) and in terms of Article (20) thereof, which lies in the interest of the plaintiff when filing a lawsuit, and it is a case and influential in his legal, financial and social status. Second: From an objective point of view: Upon consideration of the subject matter of the lawsuit, it was found that the plaintiff is covered by the provisions of paragraph (third) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, due to the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Dissolved Coalition Provisional Authority Order No. 57 of 2004) regarding the dissolution of the offices of inspectors general, and for his previous appointment as Inspector General of the Ministry of Science and Technology under Diwani Order (28) issued in the letter of the Prime Minister's Office No. (M.R.N/D2/78/3980) on 16/3/2014, and then appointed as Inspector General of the Ministry of Communications under Diwani Order (11/Sin) Issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/1326) on 19/6/2016, and then transferred by Inspector General Asala to the Iraqi Media Network under Diwani Order (22S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/14/1619) on 14/5/2019. With regard to the above, we clarify the following:

1 . The Council of Ministers, represented by its President, is one of the federal authorities stipulated in Article 47 of the Constitution, and is thus subject to the provisions of the Constitution, and its powers and powers are restricted by the provisions of Article 80 thereof, but it enjoys discretionary power in the

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application of some of those competencies, especially those stipulated in paragraph (fifth) of the aforementioned article relating to the recommendation to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors and holders of special degrees... etc., as far as the mechanism by which the nomination and selection of the person holding the said positions, the recommendation and the withdrawal thereof, means the discretionary power of the Council of Ministers in this area: his freedom to choose between the available alternatives that compete with each other to provide different solutions on the same subject, and to compare them according to logical bases, to provide the most appropriate for the public interest, and the most appropriate to meet its requirements and preserve its values, provided that this is in accordance with the principle of constitutional legitimacy, and on the basis of the foregoing, each authority, including the executive authority, must work within the framework of the principle of legality and the rule of law, even if its discretion is used, in order to accomplish its tasks, and thus its use of its discretion is not absolute, but is restricted to the limits of control exercised over it by constitutional institutions, including the Federal Supreme Court, in application of the provisions of Article (93/3rd) of the Constitution. 2 . The competence of the Council of Ministers to nominate for the position of undersecretaries of ministries, ambassadors, holders of special degrees and others, and to recommend to the Council of Representatives the appointment of the aforementioned positions in application of the provisions of Article (80) of the Constitution, and the issuance of a decision by the Council of Ministers to that effect, requires the availability of machines in the candidate that qualify him to occupy the aforementioned position, based on science, experience, competence and integrity, and conditions in the decision issued for nomination and recommendation lie in the competence, place and reason, in addition to the public interest that the decision seeks to provide the state departments with efficient elements to ensure the work of public utilities. Regularly and steadily to provide the best services to citizens, provided that the candidate enjoys these conditions and the public interest requires this until a decision is issued by the Council of Representatives on the appointment and until after the issuance of the

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aforementioned decision, if the conditions for nomination are violated in the candidate for the aforementioned position or the public interest requires the withdrawal of the recommendation for candidacy before the issuance of the decision of the Council of Representatives to appoint, there is nothing to prevent the withdrawal of the nomination and recommendation, this is not contrary to the provisions of the Constitution of the Republic of Iraq of 2005, in particular article 80 thereof, since the competence of the Council of Ministers to nominate and recommend appointment does not preclude the said Council from its competence to withdraw the recommendation and nomination, if there are serious reasons that require it in the light of the discretionary power enjoyed by the Council of Ministers in this regard, which is restricted by the public interest and the means of achieving it and the reason that prompted the withdrawal of the recommendation, provided that this is done before the appointment and approval of the recommendation by the Council of Representatives. that the withdrawal of the recommendation for candidacy in accordance with the aforementioned detail does not contradict with the principle of separation of powers referred to in Article (47) of the Constitution, As long as the withdrawal of the nomination and recommendation was obtained by the same administrative body that issued it, the Council of Ministers does not exceed the competencies of the Council of Representatives. When the recommendation is withdrawn, and to say otherwise means an undue restriction of the discretionary power and powers of the Council of Ministers in the exercise of its powers established by the Constitution, as long as the exercise of the Council of Ministers of its discretion in this regard, it is subject to the supervision of the Federal Supreme Court in application of the provisions of Article (93/3rd) of the Constitution. 3. Article (3/I) of Law No. (24) of 2019, Law on the Repeal of the Order of the Dissolved Coalition Provisional Authority No. (57) of 2004, according to which the issue of the inspector general who is not covered by retirement was addressed by authorizing the Council of Ministers to deal with such treatment, based on the decision issued by it in this regard, in particular paragraph (3) of the Council of Ministers Resolution No. (389) of 2019 as amended by Resolution No. (389)

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(464) of 2019, came in line with the competencies of the Council of Ministers contained exclusively in paragraphs (first and third) of Article (80) of the Constitution of the Republic of Iraq for the year 2005, which stipulates: (First: The Council of Ministers shall exercise the following powers: First: Planning and implementing the general policy of the state, general plans, and supervising the work of ministries and entities not associated with the Ministry. Third: Issuing regulations, instructions and decisions, with the aim of implementing laws), and therefore paragraph (3) of the aforementioned amended Cabinet Decision was issued based on the competence of the Council of Ministers to supervise the work of ministries and its competence, in the implementation of paragraph (3/first) of Law No. (24) of 2019 in application of the provisions of Article (80/1st and 3rd) of the Constitution. 4. After the repeal of the dissolved Coalition Provisional Authority Order No. (57) of 2004 by Law No. (24) of 2019, and based on the provisions of Article (3/I) thereof, paragraph (3) of the aforementioned amended Cabinet Resolution was issued, and therefore the transfer of inspectors general appointed mainly to other positions in the ministries to which they are attributed, and authorizing the minister to reappoint them as deputy minister, adviser, or director general does not mean that they are covered by the provisions of article 61/5th/Beh of the constitution, which stipulates that The Council of Representatives shall do the following: Fifth: Approving the appointment of each of: Ambassadors and holders of special degrees, upon the proposal of the Council of Ministers), and are not covered by the provisions of Article (80/5th) of the Constitution, which stipulates that (the Council of Ministers shall exercise the following powers: Fifth: Recommending to the Council of Representatives the approval of the appointment of undersecretaries of ministries, ambassadors and holders of special degrees,...) Because they have acquired legal status under Diwani Order No. (72) of 2008, which is still in force, and that the dissolution of the offices does not mean the abolition of their legal positions, and therefore there is no legal basis for re-presenting them to the Council of Ministers to recommend to the Council of Representatives for appointment, and that those who have been transferred deserve the job titles to which they are transferred, provided that they are not higher than their previous addresses, it is not permissible to

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convert an employee on the permanent staff and appointed in person to an acting employee contrary to the provisions of the law and without any subatantiation from him, this is what the Federal Supreme Court settled on in many of its rulings, including its ruling No. (218/Federal/2022) on 19/12/2022. 5. The issuance of the Council of Ministers Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, It was the result of the issuance of Law No. (24) of 2019, the law to repeal the dissolved Coalition Provisional Authority Order No. (57) of 2004, as Article (3/I) of the aforementioned law stipulates that ((whoever occupies the position of inspector general shall be referred to retirement in accordance with the Unified Retirement Law No. (9) of 2014, as for those who are not covered by the retirement law, the Council of Ministers shall issue the necessary decision against them or they shall be returned to their previous government jobs exclusively in government institutions, which means that the aforementioned article empowered the Council of Ministers to issue the necessary decision to address the issue of those who used to occupy the position of inspector general who are not covered by the retirement law or are returned to their previous jobs, and that the Council of Ministers issued paragraph (3) of its aforementioned amended decision, which stipulates that (the inspector general who does not meet the age requirement shall continue with the same grade in the entity in which he used to work, and the minister or the head of the entity not associated with a ministry shall propose his appointment as an undersecretary or a consultant or general manager), and on the basis of the foregoing, the inspector general who is not included in retirement shall retain his same job grade, in the government entity to which he is assigned and according to its staff, however, the aforementioned decision empowered the minister to propose his appointment according to the need of the ministry and its vacant cadres as an adviser, deputy minister or director general, and that the proposal for appointment does not mean re-appointing him again because it is not permissible to appoint the employee twice in the same job grade, but rather the proposal for appointment for the appointed employee is intended to match the job grade with the grades of the ministry's staff attributed to it according to the ministry's need, and the grades allowed by its staffing in light of the discretionary power possessed by

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the competent minister for the purpose of interest. On the basis of the foregoing, paragraph (3) of the aforementioned Cabinet Resolution was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which stipulates (If the employee's job is abolished and available on the date of cancellation in the department to which he is affiliated, a vacancy whose work is similar to the work of his job and from his grade, he shall be considered transferred to it with his current salary, and if the vacancy is of a grade Lower than his grade, he chooses to accept it or not, and in the event that he accepts it in writing, he must be appointed for that job). As for the Diwani order demanding that the defendants, in addition to their functions, be obliged to implement it No. (459) issued by the Prime Minister's Office No. (Mim.Ra.Waw.Dal. 7/25/20040) on 20/11/2021 containing ((amending Diwani Order No. (213) of 2020 issued in number (Mim.Ra.Waw/Dal 7/59/4467) on 8/9/2020 so that Mr. Ayman Nemat Saeed occupies the position of advisor at the grade (senior/A) instead of Director General at the Ministry of Culture, Tourism and Antiquities)) because the General Secretariat of the Council of Ministers refrains from implementing it, based on what is established under the Secretariat's letter General Council of Ministers / Legal Department No. (Sin/2/5/3/42/2325) on 15/5/2023, and its letter No. (Sin/2/5/42/4366 on 13/9/2023) attached to the Ministry of Culture's letter No. (384) on 21/8/2023, Included (The plaintiff's occupation of the position of legal adviser in your ministry as an agency and not as stated in your letter), and the court finds the following:

1 . The plaintiff was appointed as Inspector General of the Ministry of Science and Technology under Diwani Order (28) issued in the letter of the Prime Minister's Office No. (Mim. Ra.Nun/Dal 2/78/3980) on 16/3/2014, and then appointed Inspector General of the Ministry of Communications under Diwani Order (11/S) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/1326) on 19/6/2016 and then transferred as an Inspector General of authenticity to the Iraqi Media Network according to the Diwani Order (22 Sin) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/14/1619) on 14/5/2019. 2. With the issuance of Law No. (24) of 2019 (Law to Repeal the Order of the Dissolved Coalition

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Provisional Authority No. 57 of 2004), and the Council of Ministers Resolution No. (389) of 2019 amended by the Council of Ministers Resolution Issue (464) of 2019, and for its coverage of the provisions of paragraph (third) thereof and for enjoying a functional legal status based on Diwani Decree No. (72) of 2008, his services were transferred with his job grade, and the financial allocation at the grade (higher Alif) to occupy the position of advisor in the Ministry of Culture, Tourism and Antiquities according to Diwani Order (459) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/25/20040) on 20/11/2021. 3. The Diwani Order No. (459) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/25/20040) on 20/11/2021 related to the plaintiff, it was valid and in accordance with the provisions of the law, because it was issued based on the provisions of Article (3/I) of Law No. (24) of 2019 on the Repeal of the Dissolved Coalition Provisional Authority Order No. (57) of 2004, and in accordance with paragraph (3) of the Cabinet Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, and in accordance with paragraph (1) of Diwani Order No. (72) of 2008 in force, which stipulated that ((The inspector general appointed in accordance with the two orders (57) for the year 2004 and (19) for the year 2005 with the rank of under-minister)), which means that the Diwani Order No. (459) issued by the Prime Minister's Office No. (Mim.Ra.Waw.Dal. 7/25/20040) on 20/11/2021, it was confirmed that the plaintiff was appointed as an adviser and not as an acting, His appointment as an authentic advisor under the aforementioned Diwani Order came in line with the movement of the staff of the ministry attributed to it and based on paragraph (third) of the Council of Ministers Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019, especially that paragraph (third) of the aforementioned decision was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960 as amended requiring his consent, and on the basis of the foregoing, there is no place to say that the plaintiff is appointed as a power of attorney and not authenticity. 4. The request of the defendants' attorneys in addition to their functions based on the submitted list and the defenses contained therein, Dismissal of the plaintiff's lawsuit regarding the implementation of Diwani Order (459) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/25/20040) on 20/11/2021,

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despite its issuance in the correct legal and constitutional form by the Prime Minister's Office of the first defendant in addition to his job, as well as the issuance of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/42/4366) on 13/9/2023, attached to the letter of the Ministry of Culture No. (384) on 21/8/2023, which includes (The plaintiff's occupation of the position of legal advisor in your ministry is by proxy and not as It came with your letter), the insistence of the defendants' agents, being in this capacity, to execute the aforementioned Diwani order as referred to in the aforementioned letter of the General Secretariat of the Legal Department, is tantamount to an unjustified refusal to implement the Diwani order, and contrary to the jurisprudence of this court in this regard in many of its relevant rulings, including the judgment issued No. (218/Federal/2022) on 19/12/2022, which is final and binding on all authorities based on the provisions of Article (94) of the Constitution, Article (5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and Article (36) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, so this request must be answered, especially since the Prime Minister's Office is subordinate to the Prime Minister, who is a representative of the Council of Ministers, It is possible to issue his decisions through his office, and the first defendant (Prime Minister / being in this capacity) must abide by the decisions issued by him or through his office and follow up on their implementation, based on the jurisprudential rule that stipulated (whoever seeks to overturn what has been done on his part, his quest is a response to it), as for the defenses raised based on the list submitted by the defendants' agents in addition to their jobs dated 31/10/2023, these defenses are also subject to response, as the plaintiff enjoys a functional legal status Based on Legislative Decree No. (72) of 2008, and to include the provisions of paragraph (3) of the Council of Ministers Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019, and as a result of which he was transferred to the position of Advisor at the Ministry of Culture, Tourism and Antiquities at the grade (Higher A), according to the Diwani Order issued by the Prime Minister's Office (459) No. (Mim.Ra.Waw/Dal 7/25/20040) in 20/11/2021, in his capacity as a representative of the Council of Ministers, the role of the General Secretariat of

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the Council of Ministers is limited to the implementation of its decisions, as the executive body of the Council of Ministers responsible for following up the implementation of those decisions, and it has no right to obstruct their implementation or object to such implementation contrary to the provisions of the Constitution and the law, and to say otherwise means suspending the decisions of the Prime Minister in his capacity as a representative of the Council of Ministers, directly executive responsible for the general policy of the State and the Commander-in-Chief of the Armed Forces, who manages the Council of Ministers and presides over its meetings in accordance with the provisions of Article 78 of the Constitution, this leads to emptying the constitutional institution of its content, especially since the decisions of the Council of Ministers or the Prime Minister issued through the Prime Minister's Office, based on the discretionary power it enjoys, in light of the provisions of the Constitution and the laws in force in order to achieve the public interest, In order to ensure the proper functioning of public utilities regularly and steadily, they are subject to the control of the competent constitutional institutions, including the Federal Supreme Court on the basis of its jurisdiction stipulated in Article (93/3rd) of the Constitution, and on the basis of the foregoing, such decisions may not be suspended or their enforcement suspended without the basis of the Constitution and the law unless they are challenged by the methods prescribed by the Constitution and the laws in force and ruled invalid or suspended in force, and therefore the abstention of the first defendant (Prime Minister / being in this capacity) and the defendant of the second (Secretary General of the Council of Ministers /being in this capacity) on the implementation of Diwani Order (459) No. (Mim.Ra.Waw/Dal 7/25/20040) on 20/11/2021 containing (Mr. Ayman Nemat Saeed shall occupy the position of advisor at the senior grade / A instead of Director General at the Ministry of Culture, Tourism and Antiquities) issued by the Prime Minister's Office, the insistence of the General Secretariat, according to paragraph (1) of its letter No. (Sin/2/5/42/4366) on 13/9/2023 that the plaintiff occupies the position of agency advisor and not authenticity, is contrary to the provisions of the Constitution and the laws in force, which requires obliging them to implement the aforementioned Diwani order, and ruling that paragraph (1) of the letter of

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the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/42/4366) on 13/9/2023 is incorrect, and when the foregoing, the Federal Supreme Court decided to rule as follows:

First: Obliging the defendants to implement the Diwani Order No. (459) issued by the Prime Minister's Office on 20/11/2021, which includes: ((Amending Diwani Order No. (213) of 2020 issued by No. (M.R.W/D 7/59/4467) on 8/9/2020 so that Mr. Ayman Nemat Saeed occupies the position of advisor at the grade (senior / A) instead of Director General at the Ministry of Culture, Tourism and Antiquities)).

Second: The invalidity of paragraph (1) of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/42/4366) on 13/9/2023 containing (The occupation of Mr. Ayman Nemat Saeed for the position of legal advisor in the Ministry of Culture Prepared by way of proxy).

Third: The defendants shall be charged to the Prime Minister and the Secretary-General of the Council of Ministers, being in this capacity, fees and expenses.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 26/Jamada Al-Oula/1445 Hijri coinciding with 11/December/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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