

Republic of Iraq
Federal Supreme Court
Ref. 109 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 24.5.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Jawad Abdul-Kadhim Alwan - his attorney, Mustafa Shaalan Al-Lahibi.

The defendants:

1. Mustafa Abdul Latif Mushtat / Prime Minister / In addition to his post - his deputy, Legal Counsel Haider Ali Jaber.
2. Alaa Jawad Hamid Al-Saadi / Chairman of the Integrity Commission / in addition to his post - his deputy, the legal employee Laith Hussein Fadel.

The claim:

The plaintiff claimed, through his attorney, that Article (37/1st/C) of the Constitution of the Republic of Iraq for the year 2005 stipulated (it is forbidden to all kinds of psychological and physical torture and inhuman treatment, and there is no consideration for any confession extracted under duress, threats or torture....), as stipulated in Article (19/12th) of the Constitution stipulates (It is not permissible to imprison or arrest in places other than those

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designated for that in accordance with prison laws...), and Article (19/13th) of the Constitution stipulates that (the papers of the preliminary investigation shall be presented to the competent judge within a period of time do not exceed twenty-four hours from the time of the arrest of the accused ...), and where several complaints were lodged by the families and families of detainees of the canceled Diwani Order Committee (29) for the year 2020, including his client, and the complaints included the detainees' being subjected to torture, extortion and extortion of statements by coercion and disappearance. This prompted the Presidency of the Council of Representatives to form a fact-finding committee by Parliamentary Order (148) on (7/12/2020), which started its work and several observations were confirmed after meeting with the detainees who reported being subjected to torture in various ways and depriving them of the right to meet with their families or inform them that they are under arrest. The government prevented them from meeting The committee established a number of observations regarding arrests, investigations and places of detention, and submitted its recommendations to the Presidency of the Council of Representatives, and the name of his client was mentioned in paragraph (sixth) of the recommendations, which were sent to the Presidency of the Council of Ministers on 3/2/ 2022, and since the Federal Supreme Court's decision No. (169) had previously been issued containing the unconstitutionality of forming the committee (29) for the year 2020, and it was decided to dissolve and cancel it, and the circular of the Supreme Judicial Council No. (174 / mim .waw/ office 2021 was issued on 13/12/2021), which confirmed that the competent minister and the head of the entity not affiliated with a ministry has the power to form investigative

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committees against his ministry's employees exclusively, and that the members of the investigation committees are exclusively from the ministry's employees, and that recommendations are approved by the minister exclusively, otherwise investigations are considered void pursuant to the provisions of Article (10/ First) of the State Employees Discipline Law, and investigations into corruption cases are among the tasks of the Integrity Commission in accordance with the provisions of Law No. 30 of 2011 as amended, and that its approval of investigations and procedures carried out by the committee The abolished Act (29) of 2020, which is contrary to the law and principles of justice, and that all judicial rulings issued against detainees were based on the investigations carried out by the Committee (29) of 2020, and that his client was tried on the basis of confessions extracted under duress and torture, and judicial decisions were issued. Against him, based on the investigations of the committee, which was decided to be invalid, and when the prosecutor's attorney asked the Federal Supreme Court to rule to cancel and invalidate all the committee's procedures (29) for the year 2020, which was canceled and its investigations from the date of its formation until the court's decision No. (169/federal/2021 on 3/2/2022). The case was registered with this court in No. (109/Federal/2022), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) from the same bylaw above, the first defendant's attorney (the Prime Minister / in addition to his position) responded with the answer list dated (24/5/2022) and asked for the

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case to be dismissed in terms of formality, because the court's decision mentioned in the petition of the case decided to cancel the Diwaniyah order as of The date of issuing the decision without providing for the invalidity of the committee's procedures. Especially since the rulings and decisions issued by the Federal Supreme Court are effective from the date of their issuance unless those rulings stipulate their validity from a specific date or stipulate in those rulings that they apply to a specific incident in them. 2018), In addition to the fact that the consideration of his request falls outside the jurisdiction of the court specified in Article (93) of the Constitution and Article (4) of the Federal Supreme Court Law, as well as Article (6) of its internal system, and this is what the Court has approved in many of its rulings, including its decision No. (119/Federal/ 2019), and the judiciary decided on the issue of the plaintiff's case and the ruling in it has acquired the degree of finality, and it is not within the jurisdiction of the Federal Supreme Court to monitor judicial rulings, and this is what its judiciary has settled on, including its decision issued in No. (34/Federal/2017). As for the objective arguments made by the attorney of the first defendant, it was summed up that the plaintiff's attorney did not provide evidence to prove that his client was subjected to means of physical and moral coercion and that the Parliamentary Fact-Finding Committee recorded in Paragraph (Second) of its observations that all the accused who were arrested were with arrest warrants. Fundamentalism issued by virtue of a judicial order, as stated in Paragraph (sixth) thereof, that the committee shall have access to medical reports showing the safety of the detainees, signed by a medical committee by the Ministry of Health, and informing it of the

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place of arrest that it is a place where the required specifications are met, and that the committee's procedures are conducted in accordance with the law, as The investigation procedures are supervised by the investigative judge and the deputy public prosecutor and in the presence of a lawyer for the accused and in accordance with the procedures laid down in the Code of Criminal Procedure No. (23) of 1971 (amended), in addition to that all investigative procedures and judicial decisions issued against convicts are subject to appeal before a court Discrimination according to the rules. Therefore, the ruling was requested to dismiss the appeal in form and substance, charging the plaintiff the expenses, fees, and attorney fees. The second defendant's attorney (the head of the Integrity Commission / in addition to his position) responded to the answer statement dated 12/5/2022, summarizing that his client's department is not an adversary who can be litigated in this case in that the one who ordered the formation of the committee is the first defendant and that all the procedures that his client's department took Based on the judicial decisions issued by the competent judicial authority over which there is no authority other than the law, and no authority may interfere in the judiciary or the affairs of justice based on the provisions of Article (88) of the Constitution and the provisions of the Integrity Commission Law No. (30 of 2011) as amended, accordingly: The case is obligatory to respond to the lack of litigation based on the provisions of Article (4) of the amended Civil Procedure Law No. 83 of 1969. In addition to the decision of the Federal Supreme Court that annulled the Diwani order stipulating that it took effect from the date of its issuance and that the plaintiff (convicted) indicated against him several criminal cases for

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violations that were proven to have been committed by him on the subject of financial and administrative corruption and illegitimate gain, some of which were issued judicial rulings. Conclusive (conviction and release) and others are still under trial, and the follow-up and appeal of these cases by the legal representative of the Commission are based on the provisions of Article (14) of the Commission's Law No. (30 of 2011) amended, and the complaint about violations is requested in a disclosure form financial disclosure, especially with regard to the incident of illegal gain, was based on what was stipulated in Article (19) of the aforementioned law. In addition, the investigative criminal cases indicated against him and considered by the authority and the cases referred to it by the canceled Diwani Order No. (29 of 2020) committee, in some of which a decision was issued to release and close the investigation, while others are a decision to pardon and the rest of them are still under investigation in accordance with Article (3) of the Commission's law and it is investigated by the Commission's investigators and under the supervision of the competent investigative judge, in addition to the fact that the Diwani order in question was issued on (27/8/2020), which is prior to the date of his client (Judge Alaa Jawad) assuming the presidency of the Commission, for the reasons presented above. And the other reasons mentioned in his list of requesting the dismissal of the case. After completing the procedures in accordance with the provisions of the court's internal system, aforementioned, a date for the pleading was set in accordance with the provisions of Article (2/second) of it, and the parties were informed of it. On the day appointed for the pleading, the court was formed and the parties' attorneys attended

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and the pleading commenced in attendance and public, the plaintiff's attorney repeated what has stated in the petition The case and the request for a judgment according to it, the defendants' attorneys answered and requested the dismissal of the case for the reasons stated in their respective lists, and each party's attorney repeated his previous statements and requests, and where nothing remains to be said, the court decided the conclusion of the pleading and issued the following judgment decision:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff, Jawad Abdul-Kazim Alwan, requested through his attorney to cancel and invalidate all the procedures of the committee formed under the Diwani Order No. (29) issued by the Prime Minister's Office on August 27, 2020, which is concerned with looking into cases of corruption and important crimes. From the date of its formation until the date of the issuance of the ruling decision of the Federal Supreme Court No. (169/Federal/2021 on 2/3/2022), which includes the ruling that the above-mentioned Diwani order is invalid and cancelled, and after reviewing the requests and pleas of the litigant parties by their agents in accordance with their regulations submitted to these The court indicated to the court that the plaintiff's lawsuit focuses on the request to cancel and nullify all the procedures and investigations of the committee formed under Diwani Order No. (29) on 27/8/2020 because it contradicts the provisions of the constitution and as of the date of its formation and the Federal Supreme Court finds that its competencies are specified under Article (93) of the Constitution of

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the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) for the year 2005, as amended, and it is not among its powers to abolish And the invalidity of the committees' decisions and procedures and the results of their investigations, including the committee subject to appeal, which requires rejecting the plaintiff's suit as a form of lack of jurisdiction, and for the foregoing, the Federal Supreme Court decided to reject the claim of the plaintiff, Jawad Abdul-Kadhim Alwan, in the form of lack of jurisdiction and charge him the expenses, fees and attorney's fees for the two defendants' attorneys, the Prime Minister and the Prime Minister The Integrity Commission/ In addition to their positions, each of (legal advisor Haider Ali Jaber and legal employee Laith Hussein Fadel) an amount of one hundred thousand dinars distributed between them according to the law, and the ruling was passed by agreement based on Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 a final and binding ruling for all authorities and publicly understood on Shawwal 22/1443 AH corresponding to 5/24/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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