

Republic of Iraq
Federal Supreme Court
Ref. 11/ Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 9.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, 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:

Lawyer Karar Nasser Jawad Al-Tamimi.

The defendant:

The Prime Minister / In addition to his position - his deputy, the legal advisor Haider Ali Al-Sufi.

The claim:

The plaintiff, Lawyer Karar Nasser Jawad, claimed that the Council of Ministers issued the Diwani Order No. (22014) issue. (3041/ 2290267 on 13.1.2022) containing the approval of the Prime Minister to assign Najaf Governor Majed Azab Jaber Al-Waeli, this order violates Article (61) of the constitution in the light of the government managing daily affairs, due to the absence of the Council of Representatives that assign it, also contradict Article (42/Second) of the Council of ministers' bylaw No. (83) for the year 2019 which states (the meaning of conducting daily affairs: taking decisions and actions that are not subject to postponement that would continue the work of state institutions and public utilities regularly and steadily, and does not include, for example, proposing draft laws, contracting

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loans, appointing and exempting senior positions in the state, or restructuring ministries and departments). The Diwani order didn't state the fraise of assigning the governor by acting, this was confirmed by the letter issued by the office of the governor of Najaf in the number (117 on 1/13/2022), which appended the phrase "governor of Najaf" without the word (by acting), which indicates that the Diwani order is an appointment, while the government to administer the daily matters is defined by the Iraqi constitution with articles (61 and 64) and is not monitored by the parliament that came with it, and it lacks powers and is already expired and has no right to appoint the higher and special levels. Therefore, the plaintiff challenged this Diwani order before this court requesting to rule its unconstitutionality in accordance with its jurisdiction contained in Article (4/Third) of the Federal Supreme Court Law No. (25) of 2021 to decide cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The case was registered with this court in No. (11/Federal/2022) and the legal fee was collected for it in accordance with Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005 and informs the defendant of its petition and documents in accordance with Article (2/First) of The same Bylaw, so his attorney responded with the draft dated 1/3/2022, requesting that the case be dismissed in terms of formality, because consideration of it falls outside the jurisdiction of the Federal Supreme Court in accordance with Article (4) of its law, in addition to the plaintiff losing the two conditions of interest and the availability of damage in accordance with the requirements of Article (6) From the Bylaw of the court, and objectively, he replied that the Diwani order came based on the

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approval of the Prime Minister in accordance with his powers under the constitution as the direct executive responsible for the general policy of the state and he has the right to take measures to ensure the regular and steady running of the public facility, and that the matter included the task of managing the affairs of the governorate and does not constitute a violation of Article (61) of the Constitution nor Article (42/Second) of the Bylaw of the Council of Ministers, and that the governor is not considered one of the special degree holder, but receives the salary and allowances of an undersecretary, and the plaintiff missed Article (25/First) of the Governorates Law No. (21) of 2008 regarding the mechanism for appointing the governor, and for all of the above, a request to reject the plaintiff's lawsuit and charge him with its expenses and attorney's fees. After completing the procedures required by the court's Bylaw, a date for the pleading was set in accordance with Article (2/Second) of it, and the two parties were informed of it. On the appointed day, the court was formed, so the plaintiff, Karrar Nasser Jawad, attended, and on behalf of the defendant, his attorney, legal advisor Haider Al-Sufi, proceeded to plead in the presence and public. The plaintiff repeated what was stated in the pleading of the case and requested the judgment in accordance with what was stated in it. The defendant's attorney responded, requesting that the case be dismissed for the reasons stated in his answer draft. The plaintiff repeated his last statements and requests, as well as the defendant's attorney, and where there is nothing left to be said, the court decided on the conclusion of the pleading and issued the following judgment decision:

The decision:

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Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff's lawsuit included a challenge to the Diwani Order No. (22014) issued by the Office of the Prime Minister No. (3041/2290267) on 1/13/2022, according to which Majed Azab Jaber Al-Waeli was assigned the tasks of managing the affairs of Najaf Governorate Al-Ashraf and authorizing him the administrative and financial powers that enable him to do so. And since the defendant's powers are not in addition to his job to appoint to senior positions in the state or be exempted from them under the government of managing daily affairs, according to what was stipulated in Article (42) of the internal system of the Council of Ministers No. 2 of 2019 and for violating the aforementioned Diwaniyah order Above the provisions of Article (61) of the Constitution of the Republic of Iraq for the year (2005), so he appealed against it and requested a ruling that it was unconstitutional. Upon further consideration by this court of the plaintiff's request and the defenses of the defendant's attorney, the court came to the following conclusions:

1. It is a recognized principle for filing a lawsuit and its acceptance by the court that the plaintiff has an interest in its establishment, and the interest is the legitimate practical benefit that the plaintiff obtains from his asylum to the judiciary, where there is no claim without interest, as Article (6) of the Civil Procedures Law No. (83) of (1969) as amended stipulates that it is required in the case that the defendant has a known, conditional, possible and verified interest. However, the potential interest is sufficient if there is a reason It is also permissible to claim a deferred right, provided that the term is taken into account when ruling on it and based on the text

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of the aforementioned article, it is stipulated that the interest to be protected is legitimate, known, conditional, possible and verified.

2. The main purpose of filing a direct constitutional lawsuit is to achieve judicial protection for constitutional rights, as no person can use this right unless he has an interest in filing a lawsuit, and that the condition of interest is one of the conditions established for accepting a constitutional lawsuit as stipulated in Article (6) of the internal system of the Federal Supreme Court No. (1) of (2005), as paragraph (first) of it stipulates that the plaintiff in the subject matter of the case has a direct, immediate and influential interest in his legal, financial or social position, and since the plaintiff did not prove that the contested Diwaniyah order He had harmed one of his constitutional rights in a way that caused him direct harm and did not provide evidence that actual harm had been caused to him as a result of the issuance of the contested customs order, so the interest would not be realized in his case, and according to the foregoing, the plaintiff's claim would have lost its support from the constitution and the freedom to respond . Accordingly, the Federal Supreme Court decided to reject the claim of the plaintiff, Karar Nasser Al-Tamimi, and charge him with the judicial expenses, including the attorney's fees for the defendant's attorney, in addition to his job, the legal employee Haider Ali Jaber Al-Sufi, an amount of one hundred thousand dinars. For the year (2005) and Article (5) of the Federal Supreme Court Law No. (30) of (2005) as amended by Law No. (25) of 2021 and publicly understood on Sha'ban 5/1443 AH corresponding to 9/3/2022 AD.

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Signature of
The president

Jasem Mohammad Abboud

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